

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**TRACY DUNLAP,**

Plaintiff,

v.

**LIBERTY NATURAL PRODUCTS, INC.,**

Defendant.

Case No. 3:12-cv-01635-SI

**VERDICT**

We, the Jury, being first duly empaneled and sworn, do find as follows:

**CLAIM ONE (PART A): DISABILITY DISCRIMINATION**

1. Whether Plaintiff had a disability within the meaning of the ADA:

1a. Did Plaintiff prove, by a preponderance of the evidence, that she had an actual disability?

YES   X   NO \_\_\_\_\_

1b. Did Plaintiff prove, by a preponderance of the evidence, that she had a record of a disability?

YES   X   NO \_\_\_\_\_

*If you answered "Yes" to either of Question Nos. 1a or 1b, proceed to Question No. 2. If you answered "No" to each of Question Nos. 1a and 1b, your verdict is for Defendant on Claim One (Part A). Skip Question Nos. 2-4 and proceed directly to Question No. 5.*

2. Whether Plaintiff was able to perform essential functions of position:

2a. Did Plaintiff prove, by a preponderance of the evidence, that she was able to perform the essential functions of Defendant's Shipping clerk position without a reasonable accommodation?

YES \_\_\_\_\_

NO

*If you answered "No" to Question No. 2a, proceed to Question No. 2b. If you answered "Yes" to Question No. 2a, skip Question Nos. 2b and 3 and proceed directly to Question No. 4.*

2b. Did Plaintiff prove, by a preponderance of the evidence, that she was able to perform the essential functions of Defendant's Shipping clerk position with a reasonable accommodation?

YES

NO

*If you answered "Yes" to Question No. 2b, proceed to Question No. 3. If you answered "No" to both Question Nos. 2a and 2b, then your verdict is for Defendant on Claim One (Part A). Skip Question Nos. 3 and 4 and proceed directly to Question No. 5.*

3. Did Defendant prove, by a preponderance of the evidence, that the reasonable accommodation needed for Plaintiff to perform the essential functions of Defendant's Shipping Clerk position would impose an undue hardship on Defendant?

YES \_\_\_\_\_

NO

*If you answered "No" to Question No. 3, proceed to Question No. 4. If you answered "Yes" to Question No. 3, your verdict is for Defendant on Claim One (Part A). Skip Question No. 4 and proceed directly to Question No. 5.*

4. Whether Plaintiff's disability was a motivating factor in Defendant's decisions:

4a. Did Plaintiff prove, by a preponderance of the evidence, that her disability was a motivating factor in Defendant's decision to terminate Plaintiff's employment?

YES

NO \_\_\_\_\_

4b. Did Plaintiff prove, by a preponderance of the evidence, that her disability was a motivating factor in Defendant's decision not to rehire Plaintiff?

YES   X   NO \_\_\_\_\_

*If you answered "Yes" to either Question Nos. 4a or 4b, then your verdict for Plaintiff on Claim One (Part A). If you answered "No" to both Question Nos. 4a and 4b, then your verdict is for Defendant on Claim One (Part A). In either event, proceed to Question No. 5.*

#### **CLAIM ONE (PART B): DISABILITY DISCRIMINATION**

5. Did Plaintiff prove, by a preponderance of the evidence, that Defendant regarded Plaintiff as having a disability?

YES   X   NO \_\_\_\_\_

*If you answered "Yes" to Question No. 5, proceed to Question No. 6. If you answered "No" to Question No. 5, your verdict is for Defendant on Claim One (Part B). Skip Question Nos. 6-7 and proceed directly to Question No. 8.*

6. Did Plaintiff prove, by a preponderance of the evidence, that she was able to perform the essential functions of Defendant's Shipping clerk position without a reasonable accommodation? (Same as 2a.)

YES \_\_\_\_\_ NO   X  

*If you answered "Yes" to Question No. 6, proceed to Question No. 7. If you answered "No" to Question No. 6, your verdict is for Defendant on Claim One (Part B). Skip Question No. 7 and proceed directly to Question No. 8.*

7. Whether Plaintiff's disability was a motivating factor in Defendant's decisions:

7a. Did Plaintiff prove, by a preponderance of the evidence, that her being regarded by Defendant as having a disability was a motivating factor in Defendant's decision to terminate Plaintiff's employment?

YES \_\_\_\_\_ NO \_\_\_\_\_

7b. Did Plaintiff prove, by a preponderance of the evidence, that her being regarded by Defendant as having a disability was a motivating factor in Defendant's decision not to rehire Plaintiff?

YES \_\_\_\_\_ NO \_\_\_\_\_

*If you answered "Yes" to either Question Nos. 7a or 7b, then your verdict is for Plaintiff on Claim One (Part B). If you answered "No" to both Question Nos. 7a and 7b, then your verdict is for Defendant on Claim One (Part B). In either event, proceed to Question No. 8.*

### **CLAIM TWO: FAILURE TO REINSTATE**

8. Did Plaintiff prove, by a preponderance of the evidence, that she was excused from making a timely demand for reinstatement to her former position as Defendant's Shipping Clerk?

YES \_\_\_\_\_ NO X \_\_\_\_\_

*If you answered "Yes" to Question No. 8, proceed to Question No. 9. If you answered "No" to Question No. 8, skip Question No. 9 and proceed directly to Question No. 10.*

9. Did Plaintiff prove, by a preponderance of the evidence, both that she was physically able to perform the duties of Defendant's Shipping Clerk position and that she had been released by her physician to return to her position as Defendant's Shipping Clerk?

YES \_\_\_\_\_ NO \_\_\_\_\_

*If you answered "Yes" to both Question Nos. 8 and 9, then your verdict on Claim Two is for Plaintiff. If you answered "No" to either Question Nos. 8 or 9, then your verdict on Claim Two is for Defendant. In either event, proceed to Question No. 10.*

### **CLAIM THREE: FAILURE TO REEMPLOY**

10. Did Plaintiff prove, by a preponderance of the evidence, that she was excused from making a timely demand for reemployment by Defendant to any available position?

YES \_\_\_\_\_ NO X \_\_\_\_\_

*If you answered "Yes" to Question No. 10, proceed to Question No. 11. If you answered "No" to Question No. 10, skip Question No. 11 and proceed directly to the italicized instruction that comes immediately before Question No. 12.*

11. Did Plaintiff prove, by a preponderance of the evidence, that on or after May 4, 2012, there was an available position with Defendant, other than Defendant's Shipping Clerk position, that was suitable for Plaintiff?

YES \_\_\_\_\_ NO \_\_\_\_\_

*If you answered "Yes" to both Question Nos. 10 and 11, then your verdict on Claim Three is for Plaintiff. If you answered "No" to either Question Nos. 10 or 11, then your verdict on Claim Three is for Defendant. In either event, proceed to the next italicized instruction.*

#### **NONECONOMIC DAMAGES**

*If your verdict is for Plaintiff on any of Claim One (Part A), Claim One (Part B), Claim Two, or Claim Three, then answer Question No. 12. If your verdict was for Defendant on all of these claims, then skip Question No. 12 and have the Presiding Juror sign and date this Verdict.*

12. What amount of noneconomic damages, if any, has Plaintiff proven, by a preponderance of the evidence, she sustained as a result of Defendant's actions in Claims One (Parts A or B), Two, or Three?

\$ 70,000

*The Presiding Juror must sign and date this Verdict.*

DATED this 31 day of July, 2014.

Presiding Juror